IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 2699 OF 2006
IN
COMPANY APPEAL NO. 04 OF 2006
IN
COMPANY PETITION NO. 35 OF 2003

Shonkh Technologies International Ltd., ... Appellant.

V/s.

1. Union of India & 5 Ors. ... Respondents.

Mr.Aspi Chinoy with Mr.Krishna Kumar i/by Mr.Kedar Dighe & Mr.Vishal Khanavakar for the Appellant/ Applicant.

Mr.B.A.Desai, Additional Solicitor General with Mr.Amjad Sayyed & Ms. Anamika Malhotra i/by Mr.S.S.Sarkar for the Respondent No.1.

CORAM : R.M.LODHA & S.A.BOBDE,JJ.

DATED : 16TH NOVEMBER, 2006.

P.C.:

. We heard Mr.Aspi Chinoy, senior counsel for the Appellant in support of the Notice of Motion and Mr. B. A. Desai, Additional Solicitor General in opposition.

2. Mr.Aspi Chinoy, the senior counsel, on behalf of the Appellant submitted that in the Appeal, the Order of the Company Law Board dated 20th April, 2006 passed under section 237(b) of the Companies Act has been challenged and the appeal having already been admitted, the stay order must follow as a matter of course.

Relying upon the judgment of the Supreme Court in the case of **Rohtas Industries vs. S.D.Agarwal & Ors., 1969 (1) Supreme Court Cases 325,** the senior counsel would submit that the investigation under section 237(b) into the affairs of the company is a very serious matter and that there being no material and circumstances, justifying the investigation into the affairs of the Company, the serious prejudice shall be caused to the Appellant if investigation pursuant to the impugned order is permitted. The senior counsel invited our attention to the three grounds relied upon by the Company Law Board for an action under section 237(b) and submitted that none of these grounds justifies the investigation into affairs of the Company, much less pending appeal.

3. Mr.Aspi Chinoy, senior counsel, objected to the consideration of the affidavit dated 9th November, 2006 filed by the Respondent No.1. He, however, submitted that if that affidavit is to be taken into consideration, the facts stated therein, be treated as having been denied by the Appellant.

4. Mr.B.A.Desai, the Additional Solicitor General, on the other hand submitted that the circumstances existed on the date of the passing of the order by the

Company Law Board as set out in paragraph 4 of the impugned order, for initiating action under section 237(b) of the Companies Act, 1956. He supported the order and submitted that admission of appeal shall not justify interim order by itself.

5. We thoughtfully considered the submissions of the parties. It is true that the Appeal has been admitted. However, in our view, that does not mean that, the order staying the operation of the impugned order shall follow as a matter of course.

6. The fact that the present Appellant took over the business and assets of the Company M/s. Shonkh Technologies Ltd.,(STL) without passing on any consideration to STL is not in dispute; the sale consideration was passed on directly to the shareholders without paying the same to the Company-STL. It is true that the scheme was prepared as per the legal advice but the circumstances in which the entire arrangement took place, prima facie, would show unusualness of the case. The submission of the Additional Solicitor General that in a case like this where the existing circumstances show the case of corporate fraud, the investigation under section 237 (b) may be ordered, such investigation cannot be said to be founded no substance. Prima facie,

it cannot be said that that there is no material whatsoever or no circumstance exists, justifying action under section 237(b). Since, the Appeal has already been admitted, in our opinion, taking into consideration all available aspects, the following order shall meet the ends of justice :

ORDER

The Inspector, appointed by the Central Government pursuant to the impugned order, may proceed with the investigation into affairs of the Company, but until the disposal of the Appeal, he shall not submit report (final or interim).

7. The Notice of Motion is disposed of.

8. Hearing of the Appeal is expedited. The Office shall place the Appeal for hearing on the board in the second week of March, 2007.

(R.M.LODHA,J.)

(S.A.BOBDE,J.)

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